

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Cassandra Fenkel	Team: Squad #14	CCRB Case #: 201505300	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 06/20/2015 2:06 AM	Location of Incident: Southeast corner of Blake Avenue and Shepherd Avenue	Precinct: 75	18 Mo. SOL 12/20/2016	EO SOL 12/20/2016	
Date/Time CV Reported Sat, 06/20/2015 6:02 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 06/26/2015 11:16 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Ardolino	03101	951507	075 PCT
2. SSA Robert Martinez	01369	922716	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Todd Hansen	13329	949083	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Ardolino	Force: Police Officer Michael Ardolino struck § 87(2)(b) with a gun.	
B.POM Michael Ardolino	Off. Language: Police Officer Michael Ardolino made remarks to § 87(2)(b) based upon race.	
C.POM Michael Ardolino	Force: Police Officer Michael Ardolino used a chokehold against § 87(2)(b)	
D.POM Michael Ardolino	Force: Police Officer Michael Ardolino restricted § 87(2)(b)'s breathing.	
E.SSA Robert Martinez	Force: Sergeant Robert Martinez used physical force against § 87(2)(b)	
F.SSA Robert Martinez	Abuse: Sergeant Robert Martinez threatened § 87(2)(b) with the use of force.	
G.SSA Robert Martinez	Force: Sergeant Robert Martinez used physical force against § 87(2)(b)	
H.SSA Robert Martinez	Discourtesy: Sergeant Robert Martinez acted discourteously toward § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

### Case Summary

On June 20, 2015, Sgt. Robert Martinez of the 75<sup>th</sup> Precinct contacted the IAB Command Center to report that § 87(2)(b) was injured while being placed under arrest (Board Review 01). § 87(2)(b) was transported to § 87(2)(b) where he received three staples for a laceration on his head. This complaint was received at the CCRB on June 26, 2015, via IAB log #15-17566.

On June 20, 2015, at approximately 2:06 a.m., § 87(2)(b) was walking with four friends, including § 87(2)(b) and two unidentified individuals, in the vicinity of Blake Avenue and Shepard Avenue in Brooklyn. As they walked, § 87(2)(b) and § 87(2)(b) talked at a conversational volume. Sgt. Martinez, along with PO Michael Ardolino and PO Todd Hansen, all of the 75<sup>th</sup> Precinct, arrived in an unmarked black sedan.

§ 87(2)(b) began running and was pursued on foot by Sgt. Martinez and PO Ardolino. PO Hansen remained inside the officers' vehicle, and drove onto the sidewalk to cut § 87(2)(b) off. § 87(2)(b) stood with his hands in the air. PO Ardolino, who stood directly behind § 87(2)(b), allegedly hit him on the back of his head with his gun and stated, "Don't resist, nigger" (**Allegation A, Allegation B**). PO Ardolino allegedly placed his arm around § 87(2)(b)'s neck, restricting his breathing (**Allegation C, Allegation D**). Sgt. Martinez allegedly punched § 87(2)(b) twice in the right cheek and ribs, resulting in no injury (**Allegation E**). § 87(2)(b) fell to the ground, at which point PO Ardolino released the grip on his neck. PO Ardolino allegedly asked, "Why did you have to run, nigger?" (**Allegation B continued**).

§ 87(2)(b) and § 87(2)(b) approached § 87(2)(b) to see what was happening. Sgt. Martinez told § 87(2)(b) to move and allegedly threatened to hit him (**Allegation F**). Sgt. Martinez allegedly pushed § 87(2)(b) and threw his cell phone to the ground (**Allegation G, Allegation H**).

§ 87(4-b), § 87(2)(g)

§ 87(2)(b) was arrested for § 87(2)(b) (Board Review 02). On § 87(2)(b), § 87(2)(b)'s criminal court case was adjourned in contemplation of dismissal (Board Review 03).

There is no video footage of the incident.

This case was delayed due to it being placed on DA hold from September 2, 2015 through March 2, 2017. The statute of limitations on this case expired on December 20, 2016, § 87(2)(g)

This case was initially assigned to Investigator Erin Sweeney and was reassigned to Supervisor of Investigator's Laura Kastner upon Inv. Sweeney's departure from the agency. The case was reassigned to Investigator Cassandra Fenkel on July 15, 2016 in anticipation of the DA hold being lifted.

### Mediation, Civil and Criminal Histories

- This case was not mediation eligible.
- As of May 18, 2017, § 87(2)(b) has not filed a Notice of Claim with the NYC Comptroller's Office regarding this incident (Board Review 04).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

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### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint involving § 87(2)(b) and § 87(2)(b) (Board Review 07, Board Review 08).
- This is § 87(2)(b)'s second CCRB complaint (Board Review 09). § 87(2)(b)
- PO Ardolino has been a member of the service for five years and has had seven additional CCRB complaints filed against him involving a total of 22 allegations, three of which were substantiated. In CCRB case #201502623, a refusal to provide name and shield number allegation was substantiated. The CCRB recommended command discipline A and the NYPD concurred. In CCRB case #201506191, a discourtesy allegation was substantiated. The CCRB recommended command level instructions, however, the NYPD took no disciplinary action. In CCRB case #201605768, an entry and search allegation was substantiated. The CCRB recommended command discipline B. The NYPD disposition is still pending.
- Sgt. Martinez has been a member of the service for 18 years and has had 34 additional CCRB complaints filed against him involving a total of 106 allegations, 12 of which were substantiated. In CCRB case #200205713, a discourtesy allegation was substantiated. The CCRB recommended charges, but the NYPD issued command discipline A. In CCRB case #200704280, a physical force allegation and a threat of force allegation were substantiated. The CCRB recommended charges, however, the NYPD took no disciplinary action. In CCRB case #201101407, a frisk allegation was substantiated. The CCRB recommended a command discipline, but the NYPD issued instructions. In CCRB case #201101407, a stop allegation was substantiated. The CCRB recommended a command discipline and the NYPD issued instructions. In CCRB case #201310387, a force allegation was substantiated with charges and Sgt. Martinez lost 10 vacation days. In CCRB case #201508658, one discourteous word and one discourteous action allegation were substantiated. The CCRB recommended command discipline B. The NYPD disposition is unavailable. In CCRB case #201510169, one stop, one frisk, and one search allegation were substantiated. The CCRB recommended command discipline B. The NYPD disposition is unavailable. In CCRB case #201606105, a detainment allegation was substantiated. The CCRB recommended command discipline B. The NYPD disposition is still pending.

### **Potential Issues**

- The CCRB's Field Evidence Collection Unit conducted a canvass for video footage on June 29, 2015. No cameras in the vicinity of the incident captured this incident (Board Review 19).
- § 87(2)(b) was uncooperative with the investigation (see IAs for contact attempts).

## **Findings and Recommendations**

### **Explanation of Subject Officer Identification**

§ 87(2)(b) (Board Review 10) testified that three officers were involved in the incident and the investigation identified them as PO Ardolino, Sgt. Martinez, and PO Hansen. § 87(2)(b) said that the officer who accompanied him to the hospital “didn’t do anything” and the investigation identified the hospital transport officer as PO Hansen (Board Review 11). § 87(2)(b) identified PO Ardolino by name, § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

### **Allegations not pleaded**

**Guns Drawn:** § 87(2)(b) testified that one of his friends, he could not recall which one, informed him that either Sgt. Martinez or PO Ardolino drew their gun while pursuing him. § 87(2)(b) did not see this occur, and neither § 87(2)(b) (Board Review 13) nor § 87(2)(b) (Board Review 14) raised this allegation in their CCRB testimony. Additionally, both Sgt. Martinez and PO Ardolino (Board Review 15) denied drawing their guns. § 87(2)(g)

§ 87(2)(b)

**Force:** During his CCRB interview, PO Ardolino acknowledged that he grabbed § 87(2)(b) from behind in a bear hug. § 87(2)(b) did not raise this allegation. § 87(2)(g)

§ 87(2)(b)

**Force and Discourteous Action:** In a phone call with the CCRB on March 21, 2017, § 87(2)(b) alleged that Sgt. Martinez pushed him and threw his cell phone to the ground. § 87(2)(b) also alleged that § 87(2)(b) was struck with a patrol car. § 87(2)(b) refused to provide any specific details regarding these allegations. § 87(2)(b) was informed that he was considered a victim, and then immediately denied that anything happened to him. § 87(2)(b) stated that he had no interest in cooperating with the investigation and was unwilling to provide a sworn statement. Neither § 87(2)(b) nor § 87(2)(b) mentioned these allegations, and no officers acknowledged witnessing or participating in them. § 87(2)(g)

§ 87(2)(b)

### **Allegation A – Force: Police Officer Michael Ardolino struck § 87(2)(b) with a gun.**

It is undisputed that § 87(2)(b) sustained a head laceration during this incident. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b) testified that as he walked down the street, an unmarked sedan pulled up next to him. Sgt. Martinez said something from the front passenger’s window, though § 87(2)(b) did not hear what. § 87(2)(b) ran because he did not realize the individuals inside the vehicle were police officers. After approximately three minutes, PO Hansen’s vehicle pulled up onto the sidewalk and against a fence and cut him off. § 87(2)(b) stopped and put his hands in the air with his elbows bent at a 90 degree angle in a position of surrender. § 87(2)(b) alleged that PO Ardolino hit him on the back of his head with what § 87(2)(b) believed was a gun.

§ 87(2)(b) testified that when he heard § 87(2)(b) scream, he and § 87(2)(b) went to see what was happening. § 87(2)(b) observed § 87(2)(b) lying still on the ground. § 87(2)(b) could not recall how § 87(2)(b) was positioned. He did not believe § 87(2)(b) was handcuffed. § 87(2)(b) stood approximately 10 feet away. § 87(2)(b) did not observe any injuries on § 87(2)(b)

PO Ardolino testified that § 87(2)(b) ran as soon as PO Ardolino exited his vehicle and verbally identified himself as a police officer. PO Ardolino chased § 87(2)(b) for approximately

one block and yelled “Police! Stop!,” but § 87(2)(b) continued running. PO Hansen drove his vehicle onto the sidewalk and cut § 87(2)(b) off, at which point PO Ardolino slowed down and grabbed § 87(2)(b) from behind in a bear hug. As a result of PO Ardolino’s momentum, both he and § 87(2)(b) fell to the ground. PO Ardolino denied that he intentionally brought § 87(2)(b) to the ground. Both PO Ardolino and § 87(2)(b) fell sideways into the front fender of PO Hansen’s vehicle and a nearby fence before landing on the ground. § 87(2)(b)’s head collided with the fence. PO Ardolino denied that he struck § 87(2)(b) with a gun or any other object.

Sgt. Martinez testified that he pursued § 87(2)(b) on foot, but that § 87(2)(b) and PO Ardolino were faster than him and ran approximately three quarters of a block ahead of him. § 87(2)(b) and PO Ardolino turned a corner, and by the time Sgt. Martinez caught sight of them again, § 87(2)(b) was on the sidewalk approximately one foot away from a fence, lying on his stomach. PO Ardolino was on top of § 87(2)(b) near his waist, and appeared to be handcuffing him. Sgt. Martinez denied seeing PO Ardolino strike § 87(2)(b) with an object. Sgt. Martinez was unaware of § 87(2)(b) falling or making physical contact with the fence or PO Hansen’s vehicle.

PO Hansen corroborated that he drove his vehicle onto the sidewalk and against a fence to cut off § 87(2)(b). PO Hansen testified that by the time he exited his vehicle and walked around the rear, § 87(2)(b) was already face down on the ground and being handcuffed by PO Ardolino. PO Hansen denied seeing PO Ardolino bring § 87(2)(b) to the ground, and denied that PO Ardolino struck § 87(2)(b) in the head with an object. PO Hansen was unaware of § 87(2)(b) making physical contact with his vehicle or the fence.

§ 87(2)(b)’s FDNY Pre-Hospital Care Report documents a laceration to his head (Board Review 16). In the narrative, § 87(2)(b) reported that he was hit in the head with a police radio. § 87(2)(b)’s medical records from § 87(2)(b) (Board Review 16) indicate that § 87(2)(b) was diagnosed with a 1.5 cm laceration to his head, for which he received three staples. § 87(2)(b)’s medical records indicate that this injury resulted from an “altercation,” but they provide no additional details. § 87(2)(b)’s arrest photograph depicts a large white bandage on the top rear of his head along with blood on his white t-shirt (Board Review 17).

§ 87(2)(g)

**Allegation B – Offensive Language: Police Officer Michael Ardolino made remarks to § 87(2)(b) based upon race.**

**Allegation C – Force: Police Officer Michael Ardolino used a chokehold against § 87(2)(b)**

**Allegation D – Force: Police Officer Michael Ardolino restricted § 87(2)(b)’s breathing.**

**Allegation E – Force: Sergeant Robert Martinez used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that after PO Ardolino struck him with a gun, he stated “Don’t resist, nigger,” and wrapped his arm around § 87(2)(b)’s neck. § 87(2)(b) alleged that this “kind of” restricted his breathing because PO Ardolino was pushing the crook of his elbow against § 87(2)(b)’s windpipe. § 87(2)(b) alleged that Sgt. Martinez then punched § 87(2)(b) once in the right cheek and once in the left ribs. § 87(2)(b) fell to the ground, at which point PO Ardolino released his grip from § 87(2)(b)’s neck. PO Ardolino allegedly asked, “Why did you have to

run, nigger?” § 87(2)(b) denied that he resisted the officers’ attempts to handcuff him in anyway, and he denied refusing to provide his hands or tensing his arms.

As discussed, § 87(2)(b) testified he observed § 87(2)(b) lying still on the ground and did not mention these allegations.

PO Ardolino testified that once on the ground, § 87(2)(b) tensed his body to prevent PO Ardolino from grabbing hold of his arms to handcuff him. PO Ardolino ordered § 87(2)(b) to “stop resisting,” but he denied using the word “nigger.” PO Ardolino pulled § 87(2)(b)’s hands into the handcuffs. Aside from this, PO Ardolino did not recall using any other physical force against § 87(2)(b). PO Ardolino denied that he wrapped his arm around § 87(2)(b)’s neck. PO Ardolino denied that Sgt. Martinez punched § 87(2)(b) in the face or the ribs. PO Ardolino did not know where Sgt. Martinez was during this portion of the incident.

Sgt. Martinez testified that he did not observe any struggle with § 87(2)(b) and did not assist PO Ardolino with taking § 87(2)(b) into custody. Sgt. Martinez denied that he had any physical contact with § 87(2)(b) at any point during the incident, and denied punching § 87(2)(b). Sgt. Martinez denied hearing PO Ardolino use the word “nigger” and he denied seeing PO Ardolino wrap his arm around § 87(2)(b)’s neck.

PO Hansen testified that there was no issue with handcuffing § 87(2)(b). PO Hansen denied that PO Ardolino referred to § 87(2)(b) as “nigger,” denied that PO Ardolino made any contact with § 87(2)(b)’s neck, and denied that Sgt. Martinez punched § 87(2)(b).

§ 87(2)(g)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

**Allegation F – Abuse of Authority: Sergeant Robert Martinez threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) testified that as he watched § 87(2)(b)’s arrest from a distance of 10 feet away, Sgt. Martinez ran towards him. § 87(2)(b) feared that Sgt. Martinez was going to “bum rush” him. Sgt. Martinez yelled, “Move! Move!” and allegedly threatened § 87(2)(b) that he would hit him. Neither § 87(2)(b) nor § 87(2)(b) mentioned hearing Sgt. Martinez threaten to hit § 87(2)(b).

Sgt. Martinez acknowledged preventing § 87(2)(b) and § 87(2)(b) from approaching § 87(2)(b) at this time. Sgt. Martinez approximated that § 87(2)(b) was 20 feet from § 87(2)(b) and he instructed him not to come any closer. Sgt. Martinez denied that he threatened to hit § 87(2)(b) and denied ever threatening § 87(2)(b) with the use of physical force. PO Ardolino and PO Hansen both denied witnessing Sgt. Martinez interact with § 87(2)(b).

§ 87(2)(g)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

**Allegation G – Force: Sergeant Robert Martinez used physical force against § 87(2)(b)**

**Allegation H – Discourtesy: Sergeant Robert Martinez acted discourteously toward § 87(2)(b)**

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

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Squad: #14

Investigator: \_\_\_\_\_  
Signature Print Date

Pod Leader: \_\_\_\_\_  
Title/Signature Print Date

Attorney: \_\_\_\_\_  
Title/Signature Print Date